

REMARKS

In the October 24, 2007 Office Action, the specification was objected to and claims 1, 3 and 4 stand rejected in view of prior art. On the other hand, claims 5 and 6 were indicated as containing allowable subject matter. Applicant wishes to thank the Examiner for this indication of allowable subject matter and the thorough examination of this application. Claims 3 and 4 also were rejected as being indefinite for failing particularly point out and distinctly claim the subject matter that Applicant regards as the invention. Finally the Title (of the specification) was objected to for not being sufficiently descriptive. No other objections or rejections were made in the Office Action.

Status of Claims and Amendments

In response to the October 24, 2007 Office Action, Applicant has amended the specification (Title) and claims 1 and 3-6 as indicated above. Thus, claims 1 and 3-6 are pending, with claims 1 and 5 being the only independent claims. Reexamination and reconsideration of the pending claims are respectfully requested in view of above amendments and the following comments.

Specification

In paragraph 2 of the Office Action, the title was objected to for not being descriptive, and a new title was suggested. In response, Applicant has amended the title as suggested in the Office Action. Applicant thanks the Examiner for the helpful suggestion. Applicant believes that the specification is now correct and complies with 37 CFR §1.71 and 37 CFR §1.75(d)(1). Accordingly, withdrawal of the objections is respectfully requested.

Claim Rejections - 35 U.S.C. §112

In paragraph 3 of the Office Action, claims 3 and 4 were rejected under 35 U.S.C. §112, second paragraph. In response, Applicant has amended claims 3 and 4 to overcome this rejection. Claim 3 now reads "the second scroll is a moving scroll that is movable ~~capable of moving~~ with respect to the first scroll." Thus, the objectionable language of claim 3 has been removed. Claim 4 now reads "the end plate of ~~the first scroll~~ or the second scroll

is provided with a back pressure introduction path..." Thus, the alternative language has been removed from claim 4.

Applicant believes that the claims now comply with 35 U.S.C. §112, second paragraph.

Accordingly, withdrawal of this rejection is respectfully requested.

Rejections - 35 U.S.C. § 102

In paragraphs 4 of the Office Action, claims 1, 3 and 4 stand rejected under 35 U.S.C. §102(b) as being anticipated by Barito et al. (Barito) (Japanese Patent No. 04-166690). Applicants respectfully request clarification of this grounds of rejection. Did the Office Action intend to reject these claims based on (1) U.S. Patent No. 5, 145, 345 to Barito et al., (2) Japanese Patent Publication No. JP 04-166690, or both (1) and (2). In any case, in response, Applicant has amended independent claim 1 to more clearly define the present invention over the prior art of record.

In particular, independent claim 1 now requires, *inter alia*, the position adjustment device being configured to change a position of the seal between a sealing position at which the seal hermetically contacts the end plate of the second scroll and a leakage position at which the seal is separated from the end plate of the second scroll to place the second scroll in a non-compression position. Clearly, this structure is *not* disclosed or suggested by the Barito et al. patent, the '690 publication or any other prior art of record.

The scrolls in the Barito et al. patent are maintained in compression positions (i.e., positions where fluid in the compression chamber is compressed during relative reciprocal movement of the scrolls), even if slightly axially displaced due to the magnetic seals, 15, 19 and 26-28 maintaining tight seals. In fact, the Barito et al. indicates that fluid seal exists even at startup, without requiring a further mechanical or fluid pressure bias. when there is inadequate pressure available to create sealing from pressure. Similarly, the '690 publication appears to disclose scrolls that are always maintained in compression positions (i.e., positions where fluid in the compression chamber is compressed during relative reciprocal movement of the scrolls). Thus, the Barito et al. patent and the '690 publication both fails to disclose or suggest *a position adjustment device being configured to change a position of the seal between a sealing position and a leakage position at which the seal is separated from the end plate of the second scroll to place the second scroll in a non-compression position*.

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It is well settled under U.S. patent law that for a reference to anticipate a claim, the reference must disclose each and every element of the claim within the reference. Therefore, Applicant respectfully submits that independent claim 1, as now amended, as well as its dependent claims 3 and 4 are not anticipated by the Barito et al. patent or the '690 publication. Accordingly, withdrawal of this rejection is respectfully requested.

Allowable Subject Matter

In paragraph 5 of the Office Action, claims 5 and 6 were indicated as containing allowable subject matter. Applicant wishes to thank the Examiner for this indication of allowable subject matter and the thorough examination of this application. In response, Applicant has amended claim 5 to place this claim in independent form. Claim 6 depends from claim 5. Thus, claims 5 and 6 are now believed to be allowable.

Prior Art Citation

In the Office Action, additional prior art references were made of record. Applicant believes that these references do not render the claimed invention obvious.

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In view of the foregoing amendment and comments, Applicant respectfully asserts that claims 1 and 3-6 are now in condition for allowance. Reexamination and reconsideration of the pending claims are respectfully requested.

Respectfully submitted,

/Patrick A. Hilsmier/
Patrick A. Hilsmier
Reg. No. 46,034

GLOBAL IP COUNSELORS, LLP
1233 Twentieth Street, NW, Suite 700
Washington, DC 20036
(202)-293-0444
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